NO. 83-982

In The
Supreme Court of the United States
October Term, 1983

JAMES DEAN BRIDGES
AND PERCY GARCIA,

Petitioners,

vs.

McLENNAN COUNTY, TEXAS,

Respondent.

REPLY OF PETITIONERS TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Respondent, McLennan County, Texas, argues basically two points in its Brief:

1. The search of the car and luggage was a legal search; and

2. The boys said the money was stolen and therefore they acquired no title to it.

Petitioners' attorney believes McLennan County's Brief contains many confusing and inaccurate statements in presenting those arguments.

LEGALITY OF THE SEARCH

Respondent's attorney almost completely ignores the Petitioners' first question presented for review:

Whether the exclusionary rule applies to this case? The issue is not, at this time whether the search and seizure was legal (although that is the ultimate question to be answered if the exclusionary rule applies. Petitioners strongly disagree that the search and seizure was legal). Despite what the Respondent County states on page 7 of its Reply Brief, neither the Trial Court nor the Fifth Circuit Court of Appeals concluded that the search was legal.

Indeed, the Trial Court stated that case law "pointed to the conclusion that the warrantless search. . .was an illegal search under the Fourth Amendment." (See p. A-29 of Petitioners' Writ of Certiorari) Nor did the Fifth Circuit ever say the search was legal. They carefully avoided that issue by holding the exclusionary rule did not apply in this civil suit and therefore the issue of the legality or illegality of the search was irrelevant.

In *One 1958 Plymouth v. Commonwealth of Pennsylvania,* 380 U.S. 693, 85 S.Ct. 1246 (1965) this Supreme Court was presented with a similar question. In that case, the Supreme Court of Pennsylvania ruled that the exclusionary rule did not apply to a forfeiture proceeding.

This Supreme Court reviewed that matter and said that the rule did apply and reversed and returned the case to the Supreme Court of Pennsylvania to determine the ultimate question of the legality or illegality of the car search. That is the Petitioners' situation here.

The Respondent County also incorrectly asserts on page 7 of its Reply Brief that both the Trial Court and the Fifth Circuit found that this was not a criminal or quasi criminal case. That is not true either.

Admittedly, the Fifth Circuit said this case was not a criminal or quasi criminal *forfeiture* proceeding, but the Trial Court made no such finding. Since the Trial Court was concerned about the legality of the car search, it must have thought that the exclusionary rule applied and that this case had criminal or quasi criminal implications.

How can Respondent's attorney say this is a simple interpleader (see p. 5 of his brief) with no indicia of a criminal case (see p. 14 of his brief)? The boys were:

1. Accused of stealing the money;
2. Arrested, searched and detained at the Waco City Police Station;
3. Detained all night at the police station and at the juvenile center the next day;
4. Questioned by Federal, state, county, and city law enforcement people as to the source of the $500,000.00; and
5. Punished by the confiscation of approximately $500,000.00.

Surely this was a criminal investigation. Note even the Respondent County says in its brief that the right of the

police to hold this money was pursuant to Section 47.01 of the Texas Code of Criminal Procedure that states:

> "An officer who comes into custody of property *alleged* to have been stolen must hold it subject to the Order of the proper Court or Magistrate."

No criminal complaint was ever filed alleging or accusing the Petitioners of stealing this money. Only a civil suit was filed. What happens if there is no criminal prosecution and criminal proof of theft?

Respondent County implies on page 6 of its brief that McLennan County could not or would not criminally prosecute the boys for theft since the money was discovered in Jim Wells County (over 100 miles away). Article 13.08 of the Code of Criminal Procedure entitled "Theft" states:

> "Where property is stolen in one county and removed by the offender to another county, the offender may be prosecuted either in the county where he took the property or in any other county through or into which he may have removed the same."

No District Attorney could ever convict these boys of theft since they did not know (and still do not know) and could not prove who, if anyone, owned this money.

IS THE MONEY STOLEN? NO!

Respondent County argues that the boys said the money was stolen. How did the boys even know if they

stole the money? Because they say they stole the money, does not make it so. Who was the victim? The County and the State of Texas which also participated in the trial had to prove who the owner was.

The Petitioners state:

1. The money *is not* and *was not* stolen; nor

2. Has anyone proven it was stolen!

When the County of McLennan and the State of Texas failed to prove who was the owner of the money and each and every other element of theft as defined by the Texas Penal Code; and also prove the same beyond a reasonable doubt the Petitioners were denied due process of law and equal protection of our laws. *In Re: Winship,* 397 U.S. 358, 90 S.Ct. 1068 (1970).

Lastly, Respondent's statement on Page 3 of its brief that the boys failed to prove ownership or right to the money is misleading and confusing. The money is *presumed* to be theirs by virtue of their possession. The old adage "possession is 9 points of the law" applies. *Schley v. Couch,* 284 S.W.2d 333 (Tex. Sup. 1955); *Cook v. Kern,* 277 S.W.2d 946 (Tex. Civ. App., Galveston, 1955) aff'd 287 S.W.2d 174 (Tex. Sup. 1956); and *United States v. Wright,* 610 F.2d 930, 939 (D.C. Cir. 1979).

CONCLUSION

WHEREFORE, Petitioners request the Court to grant the Petition for Writ of Certiorari on each question presented.

Respectfully submitted,

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